

UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF MASSACHUSETTS

CIVIL ACTION NO. 1:13-cv-12061-FDS

PINAL PATEL, Individually, and as	:	
Personal Representative of the Estate of	:	
GOKULBHAI MAGANBHAI PATEL,	:	
Deceased, and on Behalf of the	:	
Beneficiaries of the Estate,	:	
	:	
Plaintiff,	:	MDL No. 2419
	:	Master Docket No. 1:13-md-2419-FDS
v.	:	
	:	Honorable F. Dennis Saylor
	:	
UNIFIRST CORPORATION, A/D/B/A	:	
UNICLEAN CLEANROOM	:	
SERVICES, SAINT THOMAS	:	<u>DEMAND FOR JURY TRIAL</u>
OUTPATIENT NEUROSURGICAL	:	
CENTER, LLC, HOWELL ALLEN	:	
CLINIC, A PROFESSIONAL	:	
CORPORATION, VAUGHAN A.	:	
ALLEN, M.D., SAINT THOMAS	:	
HOSPTIAL WEST, F/K/A SAINT	:	
THOMAS HOSPTIAL, SAINT	:	
THOMAS NETWORK AND SAINT	:	
THOMAS HEALTH,	:	
	:	
<u>Defendants.</u>	:	

SHORT FORM COMPLAINT

Plaintiff, Pinal Patel, Individually, as Personal Representative of the Estate of Gokulbhai Maganbai Patel, deceased, and on behalf of the Beneficiaries of the Estate, complaining against the Defendants, alleges as follows:

FIRST COUNT

1. Pursuant to MDL Order No. 7, entered in In Re: New England Compounding Pharmacy, Inc. Products Liability Litigation, Master Docket No. 1:13-md-2419-FDS, the undersigned counsel hereby submit this Short Form Complaint and Jury Demand against the

Defendants, and adopt and incorporate by reference the allegations in the Plaintiffs' Master Complaint, with attachments, and any and all amendments thereto.

2. Plaintiff is a resident of the State of Tennessee.

3. Plaintiff brings this action:

As the Personal Representative of the Estate of Gokulbhai Maganbhai Patel (hereinafter "Decedent"), who died on January 22, 2013.

4. Additionally, Pinal Patel, is the:

Other (Set forth) Adult Grandson of Decedent, is a resident of the State of Tennessee, and is hereby named as an additional plaintiff, and claims damages.

5. Plaintiff asserts that the Decedent was administered New England Compounding Pharmacy, Inc. ("NECC") drug methylprednisolone acetate (hereinafter referred to as "NECC drug"), causing injuries and damages, including Decedent's death.

6. The aforesaid administration of the NECC drug occurred on or about: August 27, 2012 and September 10, 2012, by Vaughan A. Allen, M.D., at Saint Thomas Outpatient Neurosurgical Center, LLC, located in Nashville, Tennessee. Howell Allen Clinic, A Professional Corporation, operated by Saint Thomas Outpatient Neurological Center, LLC. Upon information and belief, Saint Thomas Hospital West, f/k/a Saint Thomas Hospital, Saint Thomas Network, and Saint Thomas Health may have liability in this matter.

7. Dr. Vaughan A. Allen and healthcare facilities Saint Thomas Outpatient Neurosurgical Center, LLC, Howell Allen Clinic, A Professional Corporation, Saint Thomas Hospital West, f/k/a Saint Thomas Hospital, Saint Thomas Network, and Saint Thomas Health are hereinafter collectively referred to as "Clinic Related Defendants."

8. Plaintiff adopts and incorporates by reference the following Causes of Action

asserted against the Defendants in the Master Complaint:

- COUNT II: NEGLIGENCE AND GROSS NEGLIGENCE (Against UniFirst)
 - COUNT III: NEGLIGENCE AND GROSS NEGLIGENCE (Against Clinic Related Defendants)
 - COUNT IV: VIOLATION OF CONSUMER PROTECTION STATUTES (Against Clinic Related Defendants)
- Plaintiff alleges a violation of the following consumer protection statute(s): Tenn. Code Ann. §§ 47-18-101 et seq.
- COUNT VI: VIOLATION OF M.G.L. C. 93A (Against UniFirst)
 - COUNT VII: BATTERY (Against Clinic Related Defendants)
 - COUNT VIII: FAILURE TO WARN (Against Clinic Related Defendants)
 - COUNT IX: TENNESSEE PRODUCT LIABILITY CLAIMS (Against Clinic Related Defendants)
 - COUNT X: AGENCY (Against Clinic Related Defendants)
 - COUNT XI: CIVIL CONSPIRACY (Against Clinic Related Defendants)
 - COUNT XII: WRONGFUL DEATH PUNITIVE DAMAGES (Against UniFirst and Clinic Related Defendants)
 - COUNT XIII: LOSS OF CONSORTIUM (Against UniFirst and Clinic Related Defendants)
 - COUNT XIV: PUNITIVE DAMAGES (Against UniFirst and Clinic Related Defendants)

9. Plaintiff has complied with the applicable state law pre-suit requirements for filing this Short Form Complaint against Dr. Allen, Saint Thomas Outpatient Neurosurgical Center, LLC and Howell Allen Clinic, A Professional Corporation as required under Tenn. Code Ann. §§ 29-26-121(a)(1), 29-26-121(a)(2), 29-26-121(a)(3)(B), 29-26-121(a)(4), 29-26-121(b) and 29-26-122(a). Plaintiff has sent the pre-suit notice requirement necessary to bring a claim

arising under or otherwise covered by the Tennessee Medical Malpractice Act (the “TMMA”), T.C.A. § 29-26-101, *et. seq.*, against Saint Thomas West Hospital f/k/a Saint Thomas Hospital, Saint Thomas Network and Saint Thomas Health, however the timeframe for asserting the claim has not yet passed. Plaintiff will seek leave to amend to assert a claim under the TMMA against Saint Thomas West Hospital f/k/a Saint Thomas Hospital, Saint Thomas Network and Saint Thomas Health after the time period for giving notice has expired. *See* attached a copy of the notices sent to the Clinic Related Defendants, the Certified Mail Receipts and the Return Green Card from the United States Postal Service stamped with the date of mailing and Certificate of Good Faith signed by the undersigned counsel at Exhibit 1.

10. Plaintiff has sent the pre-suit demand requirement necessary to bring the claim against UniFirst, as required under Mass. Gen. Laws Ann. Ch. 93A *et seq.*, however the timeframe for asserting the claim has not yet passed. *See* attached copy of the UniFirst demand letter dated December 17, 2013 at Exhibit 2. Plaintiff will seek leave to amend to assert a claim under Mass. Gen. Laws Ann. Ch. 93A *et seq.* after the time period for giving notice has expired.

11. Plaintiff Pinal Patel, on behalf of the Estate of the Decedent, claims Decedent suffered the following injuries as a result of the administration of NECC’s drug: Following Decedent’s injection on September 10, 2012, he became ill and spent two days in the hospital. He was discharged home, but continued to experience pain. Decedent was again admitted to Saint Thomas Hospital on October 17, 2012 where he was diagnosed with fungal meningitis. Decedent’s health deteriorated due to the fungal meningitis infection and Decedent subsequently died as a result of these injuries on January 22, 2013.

12. Plaintiff Pinal Patel, on behalf of the Estate of the Decedent, claims to have suffered the following damages as a result of the administration of NECC’s drug: Plaintiff seeks

damages for the fair monetary value of the Decedent's injuries, physical conscious pain and suffering, and mental and emotional anguish. Plaintiff also seeks damages for the full value of Decedent's life and punitive damages.

13. The additional designated Plaintiff, Pinal Patel, has suffered the following: Plaintiff seeks damages for the value of the Decedent to each Plaintiff and the beneficiaries of the Estate of the Decedent, including but not limited to, compensation for the loss of the reasonably expected net income, services, protection, care, assistance, society, companionship, comfort, guidance, counsel and advice of the Decedent. Plaintiff also seeks recovery for the reasonable medical and funeral expenses of the Decedent.

Plaintiff reserves the right to amend this Short Form Complaint to add allegations and claims against individuals or entities currently omitted (in light of the Court's order permitting a Master Complaint naming defendants affiliated with NECC and currently participating in mediation by December 20, 2013) and to add or amend allegations against Defendants named herein based, in part, on further discovery.

WHEREFORE, Plaintiff demands Judgment against the Defendants awarding compensatory damages, punitive damages, attorneys' fees, interest, cost of suit, and such further relief as the Court deems equitable and just, and further, pursuant to T.C.A. § 29-28-107, Plaintiff prays for damages in an amount not to exceed \$20,000,000.

SECOND COUNT

14. Plaintiff re-alleges and incorporates by reference each of the foregoing paragraphs as if set forth at length herein.

15. Plaintiff incorporates by reference the entirety of Plaintiff's Complaint and Jury

Demand filed in the United States District Court for the Middle District of Tennessee, Nashville Division, on December 18, 2013, attached hereto as Exhibit 3.

WHEREFORE, Plaintiff demands Judgment against the Defendants awarding compensatory damages, punitive damages, attorneys' fees, interest, costs of suit, and such further relief as the Court deems equitable and just, and further, pursuant to T.C.A. § 29-28-107, Plaintiff prays for damages in an amount not to exceed \$20,000,000.

JURY DEMAND

Plaintiff hereby demands a trial by jury.

Respectfully Submitted,

PLAINTIFF PINAL PATEL,

By His Attorneys,

/s/ Kimberly A. Dougherty

Robert K. Jenner (Maryland) *Pro Hac Vice to Be Filed*

Kimberly A. Dougherty (BBO# 658014)

Elisha N. Hawk (Maryland) *Pro Hac Vice to Be Filed*

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Date: December 20 , 2013